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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,802	03/22/2004	James H. Cink	WMMG 3562.4	9954
321	7590	05/18/2006	EXAMINER ROWAN, KURT C	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			ART UNIT 3643	PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/805,802
Filing Date: March 22, 2004
Appellant(s): CINK ET AL.

Bryan Kline
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 2, 2006 appealing from the Office action mailed July 5, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 15-17 , 19, 20, and 24-32 are rejected under 35 USC 103 as being obvious over Bishoff et al.

(10) Response to Argument

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art since merely are two different embodiments of the same invention by Bishoff are being combined. The channel and void of Bishoff are also open and ready for exploration and feeding. Hence the termites are encouraged to create an aggregation site and release pheromones to attract more termites. Termites can follow a channel between the two members of the lower monitoring device 122 to a space between the blocks at elongated member 148 to form an aggregation cite by moving through openings 120 in the housing 112. There is an existing void due to the thickness of the elongated member 148. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness

is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, it should be pointed out that the channel 82 of Bishoff while substantially enclosed does not mean that the channel is inaccessible since termites can easily find there way to it and applicant has provided no evidence to support that the channel is unacceptable to termites. As to the embodiment shown in Fig. 4, applicant argues that the gap in the wood blocks are there for no other reason that to provide room for elongate member 148. However, the gap is still there and inherently provides access for termites to an aggregation site. Applicant argues that Bishoff shows how to construct a cylindrical bait monitoring device and this construction does not provide a channel through the cylindrical outer surface to a central void. However, this is incorrect since a view of Fig. 3 shows a passage through openings 20 in housing 12 then going between the halves monitoring device 22 along inner wall 25 to an aggregation site 48 which has an open volume due to the perpendicular joining of the planar members. The gap through the sides of the wood blocks is not totally blocked by the housing and hence termites have a passageway to an aggregation site. Thus if Bishoff was not concerned with an access for termites why is there openings 120 in the housing 112. Bishoff in Fig. 3 shows a cylindrical channel 40 surrounding two perpendicular members that make up elongate member 48. This leaves an opening for termites to form an aggregation site. In regard to claim 27, Fig. 4

Art Unit: 3643

of Bishoff shows two channels in each of Figs. 3 and 4 that are orthogonal to the outer cylindrical surface leading to an aggregation site. These channels are discontinuities formed in the outer surface of the aggregation base. Clearly given two channels, it would have been obvious to provide three for multiplied effect. Bishoff shows many discontinuities for termites noting openings 20, slots 74 and channel 83.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KR
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Conferees:

DA DA
PP PP